

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>STATE OF OHIO,</b>	:	
<b>Plaintiff,</b>	:	
<b>vs.</b>	:	<b>CASE NO. 2:21-CV-5587</b>
<b>MICHAEL JASON MEADE,</b>	:	<b>JUDGE SARGUS</b>
<b>Defendant.</b>	:	<b>MAGISTRATE JUDGE VASCURA</b>

**STATE OF OHIO’S MOTION TO STRIKE DEFENDANT’S SUPPLEMENTAL  
MEMORANDUM IN SUPPORT OF HIS RESPONSE IN OPPOSITION TO THE STATE  
OF OHIO’S MOTION FOR SUMMARY REMAND AND ALTERNATIVE MOTION  
FOR LEAVE TO RESPOND TO DEFENDANT’S MEMORANDUM AND  
SUPPLEMENTAL MEMORANDUM**

The State of Ohio moves to strike Defendant’s Supplemental Memorandum in Support of His Response in Opposition to the State of Ohio’s Motion for Summary Remand for the reasons stated in the attached memorandum. Alternatively, if this Court finds that the State of Ohio’s Motion to Strike is not well-taken, the State of Ohio asks for leave to respond to Defendant’s Memorandum in Opposition and Supplemental Memorandum in Opposition.

Respectfully submitted,

/s/ H. Tim Merkle  
H. Tim Merkle 0023458  
Special Prosecuting Attorney  
522 N. State Street, Suite A  
Westerville, OH 43082  
Phone: (614) 839-5700  
Fax: (614) 839-4200  
[htm@ejhlaw.com](mailto:htm@ejhlaw.com)

/s/ Gary S. Shroyer  
Gary S. Shroyer 0023439  
Special Prosecuting Attorney  
580 S. High St., Suite 300  
Columbus, OH 43215

Phone: (614) 221-5500

Fax: (614) 221-5590

[gary@shroyerlaw.com](mailto:gary@shroyerlaw.com)

/s/ Elizabeth A. Ellis

Elizabeth A. Ellis 0074332

Special Assistant Prosecuting Attorney  
and

/s/ Joshua T. Shaw

Joshua T. Shaw 0087456

Special Assistant Prosecuting Attorney  
for Mathias H. Heck, Jr.

Special Prosecuting Attorney

PO Box 972

301 West Third Street

Dayton, OH 45422

Phone: (937) 225-5757

Fax: (937) 496-6555

[ellise@mcchio.org](mailto:ellise@mcchio.org)

[shawj@mcchio.org](mailto:shawj@mcchio.org)

### MEMORANDUM

This matter is before the Court on the Defendant's December 3, 2021 notice of removal of his criminal case from the Franklin County Court of Common Pleas. (Doc. 1.) The State moved for summary remand of the case back to the common pleas court. (Doc. 5.) The Court allowed the Defendant to respond to the State's motion (Doc. 6), and Defendant filed a timely response on December 15, 2021 (Doc. 7). While permitting a response to the State's motion for summary remand, the Court also scheduled an evidentiary hearing on the Court's jurisdiction over this case, ultimately setting it on February 11, 2022. (Docs. 6 and 9.) On January 21, 2022, without leave of the Court, the Defendant filed his Supplemental Memorandum in Support of His Response in Opposition to the State of Ohio's Motion for Summary Remand with two attachments (Docs. 11, 11-1, and 11-2.)

Under the statutory procedures for removal of state criminal actions, this Court is charged with examining the notice of removal promptly, and “[i]f it clearly appears on the face of the notice and exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.” 28 U.S.C. § 1455(b)(4). If the Court does not order summary remand, then “it shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition of the prosecution as justice shall require.” *Id.* § 1455(b)(5). Here the Court has not ordered summary remand. Instead, the Court has set a hearing on the Defendant’s notice of removal.

The Court already granted Defendant an opportunity to respond to the State’s Motion for Summary Remand within seven days of its order. (Doc. 6) The State did not reply, as the Court’s order did not permit such a response. *Id.* Then, without leave of this Court, Defendant filed a supplemental memorandum and exhibits outside the time provided by the Court. (Doc 11.) Defendant did not seek leave to file, nor indicate any authority for his sua sponte submission. The Court did not summarily remand this case, and it remains set for the statutorily required evidentiary hearing to determine the Court’s jurisdiction. The only basis for consideration of the Court’s jurisdiction is the record developed in connection with the hearing mandated by 28 U.S.C. § 1455(b)(5).

### **Conclusion**

Based on the foregoing, the Defendant's supplemental memorandum and exhibits should be struck from the record. Wherefore, the State of Ohio moves this honorable Court to strike that Defendant's supplemental memorandum. In the alternative, if the Court denies the State of Ohio's motion to strike, the State respectfully requests leave of the Court to file a response.

Respectfully submitted,

/s/ H. Tim Merkle

H. Tim Merkle 0023458  
Special Prosecuting Attorney  
522 N. State Street, Suite A  
Westerville, OH 43082  
Phone: (614) 839-5700  
Fax: (614) 839-4200  
[htm@ejhlaw.com](mailto:htm@ejhlaw.com)

/s/ Gary S. Shroyer

Gary S. Shroyer 0023439  
Special Prosecuting Attorney  
580 S. High St., Suite 300  
Columbus, OH 43215  
Phone: (614) 221-5500  
Fax: (614) 221-5590  
[gary@shroyerlaw.com](mailto:gary@shroyerlaw.com)

/s/ Elizabeth A. Ellis

Elizabeth A. Ellis 0074332  
and

/s/ Joshua T. Shaw

Joshua T. Shaw 0087456  
Special Assistant Prosecuting Attorneys  
for Mathias H. Heck, Jr. 0014171  
Special Prosecuting Attorney  
PO Box 972  
301 West Third Street  
Dayton, OH 45422  
Phone: (937) 225-5757  
Fax: (937) 496-6555  
[ellise@mcOhio.org](mailto:ellise@mcOhio.org)  
[shawj@mcOhio.org](mailto:shawj@mcOhio.org)

**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Elizabeth A. Ellis  
Elizabeth A. Ellis (0074332)